

**Oral Videotaped Deposition of John Charles Thomas, III - 10/30/2019**  
**Jessica Tischer, et al. v. Union Pacific Railroad Company, et al.**

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

Jessica Tischer,  
individually and as  
Personal Representative  
For the Spouse and  
Children of Jacob Tischer,  
Decedent,  
Plaintiff,

vs. Case No. 3:19-cv-00166-jdp  
Union Pacific Railroad  
Company, a Delaware  
corporation,  
Defendant.

Union Pacific Railroad  
Company, a Delaware  
corporation,

Defendant/Third-Party  
Plaintiff,

vs.  
Professional  
Transportation, Inc.

Third-Party Defendant.

ORAL VIDEOTAPED DEPOSITION OF  
JOHN CHARLES THOMAS, III  
OCTOBER 30TH, 2019

ORAL VIDEOTAPED DEPOSITION of JOHN CHARLES THOMAS,  
III, taken on the 30th day of October, 2019, beginning  
at 11:14 a.m., at the SpringHill Suites by Marriott  
Houston Intercontinental Airport, 15840 John F. Kennedy  
Boulevard, Houston, Texas, pursuant to Notice and the  
Federal Rules of Civil Procedure, Rule No. 30.

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<p>1 A P P E A R A N C E S</p> <p>2 FOR THE PLAINTIFF:</p> <p>3 Mr. Paul Banker</p> <p>4 HUNEGS, LENEAVE &amp; KVAS</p> <p>5 1000 Twelve Oaks Center Drive, Suite 101</p> <p>6 Wayzata, MN 55391</p> <p>7 Telephone: (612) 339-4511</p> <p>8 E-mail: pbanker@hklaw.com</p> <p>9</p> <p>10 FOR THE DEFENDANT UNION PACIFIC RAILROAD COMPANY, A</p> <p>11 DELAWARE CORPORATION:</p> <p>12</p> <p>13 Ms. Brody E. Dawson</p> <p>14 UNION PACIFIC RAILROAD GENERAL ATTORNEY</p> <p>15 101 North Wacker Drive, 1920</p> <p>16 Chicago, IL 60606</p> <p>17 Telephone: (312) 777-2062 - Fax: (877) 213-4433</p> <p>18 E-mail: bedawson@up.com</p> <p>19</p> <p>20 FOR THE THIRD-PARTY DEFENDANT PROFESSIONAL</p> <p>21 TRANSPORTATION, INC.:</p> <p>22 Mr. Michael B. Cohen</p> <p>23 QUINTAIROS, PRIETO, WOOD &amp; BOYER, P.A.</p> <p>24 233 South Wacker Drive, 70th Floor</p> <p>25 Chicago, IL 60606</p> <p>Telephone: (312) 566-0040 - Fax: (312) 566-0041</p> <p>E-mail: michael.cohen@qpwbllaw.com</p> <p>THE VIDEOGRAPHER:</p> <p>Mr. Trevor Brock</p>	<p>1 EXAMINATION</p> <p>2 BY MR. BANKER:</p> <p>3 Q. Could you please state your name for the</p> <p>4 record?</p> <p>5 A. John Thomas, J-o-h-n T-h-o-m-a-s.</p> <p>6 Q. Thank you.</p> <p>7 Mr. Thomas, have you ever had your</p> <p>8 deposition taken before?</p> <p>9 A. No.</p> <p>10 Q. Let me just go over some ground rules for</p> <p>11 what we're doing here today so you understand the</p> <p>12 process. The court reporter here is taking down</p> <p>13 everything you say. So, it's important that when we're</p> <p>14 talking back and forth with each other, that when you</p> <p>15 give answers, you answer audibly, because nods of the</p> <p>16 head or saying "Uh-huh" or "Huh-uh" won't show up</p> <p>17 clearly on the transcript.</p> <p>18 A. Okay.</p> <p>19 Q. Do you understand?</p> <p>20 A. Yes.</p> <p>21 Q. And it's also important -- and I'll watch out</p> <p>22 for this -- that we not talk at the same time. So,</p> <p>23 I'll try to ask a question and then pause and give you</p> <p>24 a chance to respond. Is that okay?</p> <p>25 A. Yes.</p>

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<p style="text-align: right;">Page 6</p> <p>1 Q. Also, if I ask a question and you don't</p> <p>2 understand it, please let me know and I'll do what I</p> <p>3 can to clarify it. If you don't do that, I'm going to</p> <p>4 assume that you've understood the question. Is that a</p> <p>5 fair assumption?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. Okay. What, if anything, have you done to</p> <p>8 prepare for your deposition today?</p> <p>9 <b>A. I guess I didn't really know what to do. So,</b></p> <p>10 <b>I mean, I thought back to the incident. That's about</b></p> <p>11 <b>it.</b></p> <p>12 Q. Okay. And, you know, by preparation, I mean</p> <p>13 to include did you have any conversations with anyone?</p> <p>14 <b>A. No, I don't have anybody's number anymore.</b></p> <p>15 Q. Okay. Did you look at any documents?</p> <p>16 <b>A. No.</b></p> <p>17 Q. And when you say "the incident," what</p> <p>18 incident are you referring to?</p> <p>19 <b>A. The night that Mr. Tischer had the stroke, I</b></p> <p>20 <b>guess, when we were at work.</b></p> <p>21 Q. Okay. Do you remember what the date of that</p> <p>22 was?</p> <p>23 <b>A. No.</b></p> <p>24 Q. If I represent to you that it was</p> <p>25 August 12th, 2017, do you have any reason to disagree?</p>	<p style="text-align: right;">Page 8</p> <p>1 <b>A. FRA certificate for conductor and engineer,</b></p> <p>2 <b>locomotive engineer.</b></p> <p>3 Q. When did you get your FRA conductor</p> <p>4 certification?</p> <p>5 <b>A. 2012.</b></p> <p>6 Q. And how about the engineer certification?</p> <p>7 <b>A. 2015.</b></p> <p>8 Q. Are you currently employed?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. With whom?</p> <p>11 <b>A. Watco Companies.</b></p> <p>12 Q. What does Watco Companies do?</p> <p>13 <b>A. They're a shortline railroad.</b></p> <p>14 Q. And what do you do for Watco?</p> <p>15 <b>A. Engineer, locomotive engineer.</b></p> <p>16 Q. And how long have you been doing that?</p> <p>17 <b>A. January 28th of this year.</b></p> <p>18 Q. Is there a particular terminal or home base</p> <p>19 that you work out of?</p> <p>20 <b>A. I work at the plant, Texas Petrochemical,</b></p> <p>21 <b>in -- I think it's actually in Houston, but it's over</b></p> <p>22 <b>near Pasadena.</b></p> <p>23 Q. Where did you work before Watco?</p> <p>24 <b>A. Union Pacific.</b></p> <p>25 Q. When did you first hire on with Union</p>
<p style="text-align: right;">Page 7</p> <p>1 <b>A. No.</b></p> <p>2 Q. Okay. We're going to talk about that in just</p> <p>3 a moment, but before we do that, I'd like to get some</p> <p>4 background, biographical information about you.</p> <p>5 <b>A. Okay.</b></p> <p>6 Q. Where do you currently live?</p> <p>7 <b>A. It's 11100 FM 1960, Apartment 414, Huffman,</b></p> <p>8 <b>Texas 77336.</b></p> <p>9 Q. And how long have you lived there?</p> <p>10 <b>A. Since February.</b></p> <p>11 Q. And do you rent or own there?</p> <p>12 <b>A. Rent.</b></p> <p>13 Q. And does anyone else live there with you?</p> <p>14 <b>A. Yes, my wife and four children.</b></p> <p>15 Q. Are any of your children over the age of 18?</p> <p>16 <b>A. No.</b></p> <p>17 Q. Okay. Are you a high school graduate?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. Where did you go to high school and when did</p> <p>20 you graduate?</p> <p>21 <b>A. I was homeschooled and graduated in 2008.</b></p> <p>22 Q. 2008. Any post-high school education?</p> <p>23 <b>A. No.</b></p> <p>24 Q. Okay. Do you hold any professional licenses</p> <p>25 or certifications?</p>	<p style="text-align: right;">Page 9</p> <p>1 Pacific?</p> <p>2 <b>A. June 4th, 2012.</b></p> <p>3 Q. In what capacity did you hire on with Union</p> <p>4 Pacific?</p> <p>5 <b>A. Conductor.</b></p> <p>6 Q. Was there a particular home terminal that you</p> <p>7 worked out of?</p> <p>8 <b>A. Usually it was Altoona, Wisconsin. Sometimes</b></p> <p>9 <b>Adam -- Adams, Wisconsin.</b></p> <p>10 Q. And did you work as both a -- as a conductor</p> <p>11 and an engineer for Union Pacific between 2012 and</p> <p>12 January of 2019?</p> <p>13 <b>A. I worked as a conductor. I went to engineer</b></p> <p>14 <b>school and trained. I never worked as an engineer. I</b></p> <p>15 <b>didn't have enough seniority to hold. So...</b></p> <p>16 Q. Okay. So, your work for Union Pacific was</p> <p>17 exclusively as a conductor?</p> <p>18 <b>A. And other than the six months that I spent</b></p> <p>19 <b>training to be an engineer, but I never worked on my</b></p> <p>20 <b>own as an engineer.</b></p> <p>21 Q. Okay. Why did you leave Union Pacific to go</p> <p>22 to work for Watco?</p> <p>23 <b>A. My -- my wife's family is from here and my</b></p> <p>24 <b>family is from here and we -- we're tired of being in</b></p> <p>25 <b>Wisconsin. So, we moved back to be closer to family.</b></p>

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<p style="text-align: right;">Page 10</p> <p>1 Q. Okay. Before you worked for UP, who did you</p> <p>2 work for?</p> <p>3 <b>A. New England Lead Burning Company.</b></p> <p>4 Q. I'm sorry. I missed the --</p> <p>5 <b>A. New England Lead Burning Company.</b></p> <p>6 Q. Lead Burning Company?</p> <p>7 <b>A. Yes, sir.</b></p> <p>8 Q. What does -- what does New England Lead</p> <p>9 Burning Company do?</p> <p>10 <b>A. They put in radiation shielding for hospitals</b></p> <p>11 <b>mostly, any type of lead work, plants, things like</b></p> <p>12 <b>that.</b></p> <p>13 Q. Okay. What did you do for them?</p> <p>14 <b>A. I was a lead burner.</b></p> <p>15 Q. And how long did you do that?</p> <p>16 <b>A. From 2009 to 2012.</b></p> <p>17 Q. Okay. I want to shift gears now and talk</p> <p>18 about -- a little bit about Jacob Tischer. Did you</p> <p>19 know Jacob Tischer?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. How did you know him?</p> <p>22 <b>A. From work. He was a colleague.</b></p> <p>23 Q. At the Altoona -- UP's Altoona yard?</p> <p>24 <b>A. Yes, sir.</b></p> <p>25 Q. When did you first meet him?</p>	<p style="text-align: right;">Page 12</p> <p>1 <b>A. Job 10 is the job that switches and</b></p> <p>2 <b>classifies cars in the yard, builds trains. Job 10 is</b></p> <p>3 <b>the second shift job.</b></p> <p>4 Q. Do you know when you went on duty that day?</p> <p>5 <b>A. It would have been 1430.</b></p> <p>6 Q. Was that the time that you regularly started</p> <p>7 the second shift job?</p> <p>8 <b>A. Yes, sir.</b></p> <p>9 Q. Were you working with anyone that day?</p> <p>10 <b>A. Yes, his name is Harold Lowe. He was</b></p> <p>11 <b>footboard.</b></p> <p>12 Q. What is a -- what is a footboard?</p> <p>13 <b>A. He was a yard -- footboard yardmaster. He</b></p> <p>14 <b>was the supervisor in charge, foreman.</b></p> <p>15 Q. What was -- just from a layperson's</p> <p>16 perspective, what was -- what was Job 10 in the Altoona</p> <p>17 yard that day? What were you -- what were you doing</p> <p>18 exactly?</p> <p>19 <b>A. I don't remember exactly what we were doing.</b></p> <p>20 <b>We switched cars. We -- trains would come in, set out</b></p> <p>21 <b>cars that had to go to different places. We would</b></p> <p>22 <b>switch them out and classify them and get them</b></p> <p>23 <b>organized so that another train could pick them up and</b></p> <p>24 <b>take them to their destination.</b></p> <p>25 Q. Did you have -- and we'll take this in</p>
<p style="text-align: right;">Page 11</p> <p>1 <b>A. We went through conductor class together.</b></p> <p>2 <b>So, it would have been June of two thousand -- 2012.</b></p> <p>3 Q. Did you ever have occasion to work with him</p> <p>4 on a crew?</p> <p>5 <b>A. I don't think I ever worked with him on a --</b></p> <p>6 <b>directly on the same crew, no.</b></p> <p>7 Q. And would that be because you were both</p> <p>8 working as conductors?</p> <p>9 <b>A. Yeah, but -- and -- and I think he mostly</b></p> <p>10 <b>worked -- he worked a lot in Itasca, too. And I never</b></p> <p>11 <b>worked up there. We were just -- yeah, because we were</b></p> <p>12 <b>both conductors, we didn't work together.</b></p> <p>13 Q. Did you know each other outside of work at</p> <p>14 all?</p> <p>15 <b>A. No.</b></p> <p>16 Q. So, it was purely a co-worker acquaintance?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. I want to focus you on August 12th, 2017.</p> <p>19 Were you working that day?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. Where were you working that day?</p> <p>22 <b>A. I was switchman on Job 10 in the Altoona</b></p> <p>23 <b>yard.</b></p> <p>24 Q. And what does the switch -- what is Job 10 in</p> <p>25 the Altoona yard?</p>	<p style="text-align: right;">Page 13</p> <p>1 chunks. So, I want to say before 5:00 p.m. that day,</p> <p>2 August 12th, 2017, before 5:00 p.m. that day, did you</p> <p>3 have any opportunity to see Jacob Tischer at work?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. Tell me when you first saw him.</p> <p>6 <b>A. I couldn't tell you the exact time. It would</b></p> <p>7 <b>have been around when we went on duty, 1430, 1500.</b></p> <p>8 <b>We -- we were inside the depot, me and Harold, getting</b></p> <p>9 <b>our paperwork together and stuff. And Mr. Tischer came</b></p> <p>10 <b>into the room to ask what power they wanted him to</b></p> <p>11 <b>take. It was on the white board in the room. And I</b></p> <p>12 <b>might have, you know, said, hey, how you doing,</b></p> <p>13 <b>something like that. We really didn't talk, but I'd</b></p> <p>14 <b>seen him.</b></p> <p>15 Q. Do you remember any other specifics of that</p> <p>16 first conversation with Mr. Tischer?</p> <p>17 <b>A. No, not really, you know, it was one of those</b></p> <p>18 <b>things you do every day. You know, just hey, how you</b></p> <p>19 <b>doing, how's it going, stuff like that. It wasn't</b></p> <p>20 <b>really anything memorable.</b></p> <p>21 Q. Okay. Do you remember him saying anything to</p> <p>22 you specifically?</p> <p>23 <b>A. No, not specifically, just kind of talked,</b></p> <p>24 <b>you know, just in passing, nothing specific.</b></p> <p>25 Q. Did you have an opportunity to make any</p>

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<p style="text-align: right;">Page 14</p> <p>1 observations of him?</p> <p>2 <b>A. I didn't think he -- it seemed abnormal. I</b></p> <p>3 <b>mean, he seemed like his normal self as far as I could</b></p> <p>4 <b>tell.</b></p> <p>5 Q. Okay. Was there anyone else with you or with</p> <p>6 him present when you were first having this</p> <p>7 conversation with him?</p> <p>8 <b>A. I know that Harold Lowe was in the room. I</b></p> <p>9 <b>couldn't tell you if there was somebody else in the</b></p> <p>10 <b>room or not. I don't remember.</b></p> <p>11 Q. Okay. How long did that conversation take</p> <p>12 place?</p> <p>13 <b>A. Five minutes.</b></p> <p>14 Q. Okay. Do you know where Mr. Tischer went</p> <p>15 after he was done talking with you?</p> <p>16 <b>A. I -- he was getting his paperwork together.</b></p> <p>17 <b>So, he would have went into the other room with the</b></p> <p>18 <b>computers next door to get their paperwork together.</b></p> <p>19 Q. Did you see him -- when was the next time</p> <p>20 that you saw him after that initial conversation ended?</p> <p>21 <b>A. That would have been when they came back to</b></p> <p>22 <b>the yard that evening.</b></p> <p>23 Q. Okay. Do you know what time that was?</p> <p>24 <b>A. I believe it was around 8:00.</b></p> <p>25 Q. And let me just kind of bookmark that. We'll</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. As a -- when he was -- as -- working as a</p> <p>2 locomotive engineer?</p> <p>3 <b>A. Yes, sir.</b></p> <p>4 Q. How many times would you say you worked with</p> <p>5 him before?</p> <p>6 <b>A. A lot, probably 200 -- I mean, a pretty good</b></p> <p>7 <b>bit.</b></p> <p>8 Q. Okay. Did you see Mr. Franchuck -- and</p> <p>9 let's -- let's focus on this time frame from when you</p> <p>10 came on duty up to the point that they came back at the</p> <p>11 yard at about 8:00 o'clock. I just want to talk --</p> <p>12 take about the first segment.</p> <p>13 <b>A. Yes, sir.</b></p> <p>14 Q. Did you see Mr. Franchuck that day?</p> <p>15 <b>A. If I did, I don't remember it.</b></p> <p>16 Q. Okay.</p> <p>17 <b>A. It wasn't anything I committed to memory. I</b></p> <p>18 <b>don't believe I did.</b></p> <p>19 Q. Okay. So, between 1430 when you came on duty</p> <p>20 and 8:00 p.m., you were -- how were you spending your</p> <p>21 time?</p> <p>22 <b>A. I was working in the yard on Job 10 switching</b></p> <p>23 <b>cars. You know, I don't remember exactly what we were</b></p> <p>24 <b>doing that day. But we would have been out in the yard</b></p> <p>25 <b>working.</b></p>
<p style="text-align: right;">Page 15</p> <p>1 come back to that --</p> <p>2 <b>A. Okay.</b></p> <p>3 Q. -- and pick up the story there. But I just</p> <p>4 want to ask a couple of follow-up questions before we</p> <p>5 move on.</p> <p>6 So, you had had a conversation with</p> <p>7 Mr. Tischer around 1430 when you came on duty?</p> <p>8 <b>A. Yes, sir.</b></p> <p>9 Q. But other than what you've described, you</p> <p>10 didn't have any other conversations with him or make</p> <p>11 any other observations of him until he came back --</p> <p>12 <b>A. Yes, sir.</b></p> <p>13 Q. -- to the yard? Okay.</p> <p>14 Do you know who Mr. Tischer was working</p> <p>15 with that day?</p> <p>16 <b>A. Yes, sir.</b></p> <p>17 Q. Who was that?</p> <p>18 <b>A. Neil Franchuck (phonetically).</b></p> <p>19 Q. How do you know Neil Franchuck?</p> <p>20 <b>A. I -- I -- he was an engineer. He was the</b></p> <p>21 <b>local chairman when I first got hired on, just through</b></p> <p>22 <b>work.</b></p> <p>23 Q. Okay. Have you ever worked with</p> <p>24 Mr. Franchuck?</p> <p>25 <b>A. Yes.</b></p>	<p style="text-align: right;">Page 17</p> <p>1 Q. Were there any other crews active in the --</p> <p>2 in the Altoona yard that day on the second shift?</p> <p>3 <b>A. We were the only yard job active. There may</b></p> <p>4 <b>have been some through freight trains come in. I'm --</b></p> <p>5 <b>I'm not sure. And Mr. Tischer and Mr. Franchuck would</b></p> <p>6 <b>have been in the yard to get their power. I think they</b></p> <p>7 <b>took power up with them that day, but that would have</b></p> <p>8 <b>been it.</b></p> <p>9 Q. Okay. Do you recall whether you went onto</p> <p>10 Mr. Franchuck and Mr. Tischer's locomotive at any time</p> <p>11 before they departed the Altoona yard?</p> <p>12 <b>A. No, I did not.</b></p> <p>13 Q. You specifically remember you did not?</p> <p>14 <b>A. I didn't. I know I didn't.</b></p> <p>15 Q. Okay. All right. Let's now -- let's shift</p> <p>16 and focus on the 8:00 p.m., going forward, time frame.</p> <p>17 <b>A. Okay.</b></p> <p>18 Q. The way we had kind of gotten to the</p> <p>19 8:00 p.m. was you said that was roughly the time when</p> <p>20 you next saw Mr. Tischer. So, I want to pick the story</p> <p>21 up there. When did you next -- tell me what you</p> <p>22 remember about the next time you saw Mr. Tischer after</p> <p>23 that initial conversation.</p> <p>24 <b>A. They -- they came into the yard on the west</b></p> <p>25 <b>end. Mr. Tischer got off the locomotive to tie -- so</b></p>

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<p style="text-align: right;">Page 18</p> <p>1 they could pull -- so Mr. Franchuck could pull by him.</p> <p>2 And he tied brakes on the west end of the cars. And I</p> <p>3 seen him next when he came in the cab up to the east</p> <p>4 end of the yard where we were.</p> <p>5 Q. So, I want to follow up on a couple things</p> <p>6 you mentioned there. Where were you when Tischer and</p> <p>7 Franchuck came into the west end of the yard?</p> <p>8 A. I was on the east end of the yard in the</p> <p>9 little switching -- we called it a shanty. It was a</p> <p>10 little computer room. I think we were updating our</p> <p>11 list or something. I was sitting in there.</p> <p>12 Q. Okay. So, you're in the shanty. And is that</p> <p>13 on the west end or the east end --</p> <p>14 A. That's --</p> <p>15 Q. -- of the yard?</p> <p>16 A. That's the east end.</p> <p>17 Q. Shanty on the east end?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And you see Tischer and Franchuck come back</p> <p>20 to the Altoona yard?</p> <p>21 A. I didn't see them.</p> <p>22 Q. Okay.</p> <p>23 A. But they called on the radio and got</p> <p>24 permission to come in. So...</p> <p>25 Q. I see. So, you were aware that they were</p>	<p style="text-align: right;">Page 20</p> <p>1 up in a cab?</p> <p>2 A. Yes.</p> <p>3 Q. And so by coming up, you mean comes up to</p> <p>4 where you're at, at the shanty?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Okay. And by "cab," what do you mean by</p> <p>7 "cab"?</p> <p>8 A. He was in the PTI van, the -- Dodge Durango.</p> <p>9 Q. And so you saw that, I take it?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Was that -- was that the first time you saw</p> <p>12 Mr. Tischer with your own eyes as he returns to the</p> <p>13 Altoona yard that night?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Okay. And you're -- you're inside the shanty</p> <p>16 at that point?</p> <p>17 A. Yes, sir, with the -- the door was open.</p> <p>18 Q. Okay.</p> <p>19 A. But, yes.</p> <p>20 Q. Does the shanty have windows at all?</p> <p>21 A. It has one window that faces south. There</p> <p>22 was an air-conditioning in the other window. So,</p> <p>23 one -- one door faced south. One window faced south.</p> <p>24 The door faced to the west.</p> <p>25 Q. Okay. And so the reason you were able to see</p>
<p style="text-align: right;">Page 19</p> <p>1 coming back in?</p> <p>2 A. Yes, sir.</p> <p>3 Q. And that was at approximately?</p> <p>4 A. I -- approximately 8:00. It's been a long</p> <p>5 time. I don't remember the exact time. But it was</p> <p>6 approximately 8:00.</p> <p>7 Q. Okay. And then you said Tischer got off the</p> <p>8 locomotive. Did you see that?</p> <p>9 A. No, sir.</p> <p>10 Q. Okay. How do you know that he got off?</p> <p>11 A. I just -- I -- that's what you do, you get</p> <p>12 off there. And he wasn't on the locomotive when</p> <p>13 Mr. Franchuck came up. He came up in the cab. And I</p> <p>14 know he tied brakes because I heard him on the radio</p> <p>15 getting red zones and releasing for securement and all</p> <p>16 that stuff. So...</p> <p>17 Q. So, you're -- you're hearing Mr. Tischer on</p> <p>18 the radio?</p> <p>19 A. Yes.</p> <p>20 Q. And are you -- were you familiar enough with</p> <p>21 his voice to know that it was him talking or how did</p> <p>22 you know it was Tischer?</p> <p>23 A. I knew it was -- I recognized his voice, yes,</p> <p>24 sir.</p> <p>25 Q. Okay. And then I think you said Tischer came</p>	<p style="text-align: right;">Page 21</p> <p>1 Mr. Tischer was that the door was open?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Okay. So, had Mr. Franchuck arrived in the</p> <p>4 locomotive at the shanty by that point?</p> <p>5 A. Yes, sir, he was already there.</p> <p>6 Q. How many -- what time approximately after</p> <p>7 their arriving in the yard on the -- that you heard on</p> <p>8 the radio did Mr. Franchuck arrive at the shanty as</p> <p>9 best you recall?</p> <p>10 A. Less than five minutes.</p> <p>11 Q. And when Mr. Franchuck arrived in the</p> <p>12 locomotive, he was alone?</p> <p>13 A. Yes, sir.</p> <p>14 Q. How long was it between when Mr. Franchuck</p> <p>15 arrived on the locomotive and when Mr. Tischer arrived</p> <p>16 in the PTI vehicle?</p> <p>17 A. Ten minutes or maybe a little less but</p> <p>18 approximately.</p> <p>19 Q. Okay. Do you know who the driver was of the</p> <p>20 PTI vehicle?</p> <p>21 A. I don't remember his name. But I -- he was</p> <p>22 an older man. He had an accent. He was from</p> <p>23 somewhere. But I can't remember. I don't remember his</p> <p>24 name. I'd recognize him.</p> <p>25 Q. Is the name Chaz Lux familiar to you?</p>

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1     **A. Yes, sir, it's Chaz, that's it.**  
2     Q. Was he the driver --  
3     **A. Yes, sir.**  
4     Q. -- of the PTI vehicle?  
5     **A. Yes, sir.**  
6     Q. Okay. So, the PTI Dodge Durango arrives at  
7 the shanty with Mr. Lux and Mr. Tischer sometime after  
8 Mr. Franchuck arrives in the locomotive. What happens  
9 next?  
10    **A. Let me back up just a little bit.**  
11    Q. Sure.  
12    **A. When Mr. Franchuck pulled up and stopped the**  
13 **train, he -- he got off the locomotive and came over to**  
14 **the shanty where I was. And he said that they**  
15 **wanted -- the manager wanted them to go back up to**  
16 **Norma for another trip to pull more cars down. And he**  
17 **asked me if, when Jake came up, could I -- could I talk**  
18 **to him because he thought he was acting funny. And I**  
19 **said, well, you know, something like, well,**  
20 **what's acting -- you know, what do you mean? And he**  
21 **said, I don't know. I can't put my finger on it. He**  
22 **just -- he doesn't seem like himself.**  
23    Q. Okay.  
24    **A. So, we had that little conversation and then**  
25 **Mr. Tischer came up and stopped in the Durango. I was**

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1     **A. Yeah.**  
2     Q. -- to put that piece of the puzzle in. Now  
3 Mr. Franchuck is coming up in the Dodge Durango with  
4 Mr. Lux --  
5           MS. DAWSON: Object to the form of the  
6 question.  
7           MR. BANKER: Did I screw that up?  
8           MS. DAWSON: You said Mr. Franchuck.  
9           MR. BANKER: Oh. Okay. Sorry.  
10    Q. (BY MR. BANKER) So, now Mr. Tischer is  
11 driving up in the Dodge Durango with Mr. Lux. What  
12 happens next?  
13    **A. Me and Mr. Franchuck -- the Dodge Durango**  
14 **stopped. And Mr. Tischer opened the door, but he**  
15 **didn't get out. And I walked around to his side.**  
16 **Mr. Franchuck was there, too. And I asked Mr. Tischer**  
17 **if he was feeling -- I think it was something like, you**  
18 **know, are you -- are you all right or, you know, Neil**  
19 **thinks that you're acting funny. And he said that he**  
20 **was all right. But he seemed off. I didn't know**  
21 **exactly what was wrong with him. But he didn't seem**  
22 **normal. And I actually thought, maybe, it was**  
23 **like he -- maybe low blood sugar or something like**  
24 **that, you know. And so I asked him if he was diabetic**  
25 **and, you know, different things. And -- and I -- and**

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1     **inside the shanty at that point.**  
2     Q. So, were you inside the shanty when you're  
3 having this conversation with Mr. Franchuck?  
4     **A. Yes, sir.**  
5     Q. Was anybody else present inside the shanty  
6 when you're having this conversation with  
7 Mr. Franchuck?  
8     **A. Harold Lowe.**  
9           THE REPORTER: Harold?  
10    **A. Lowe. I think it's Lowe. I say "Lowe," but**  
11 **I think it's Lowe. It's w -- it's L-o-w-e.**  
12    Q. (BY MR. BANKER) Okay. So -- so, Harold Lowe  
13 was there. You're there. Mr. Franchuck is there.  
14 You're all in the shanty on the east end of the yard  
15 talking about this issue with Mr. Tischer. How long  
16 does that conversation take place?  
17    **A. Maybe five minutes. I don't remember**  
18 **Mr. Lowe actually being involved in the conversation.**  
19 **He was in the room. He was working on the computer.**  
20    Q. Okay.  
21    **A. The conversation was more between me and**  
22 **Mr. Franchuck. I don't remember Mr. Lowe ever actually**  
23 **saying anything.**  
24    Q. Okay. And so I think what you -- what you  
25 said -- you had said you're backing up there to --

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1     **he said, no. And he -- he kept saying he was okay, but**  
2 **he didn't seem okay to me or Mr. Franchuck. And that**  
3 **conversation maybe lasted five minutes.**  
4     Q. Okay. Let me just back up a step. Have you  
5 had any experience with people who are diabetic or  
6 have low -- or who have low blood sugar incidents?  
7     **A. Yes, sir.**  
8     Q. Tell me -- just kind of -- I want to  
9 understand your basis for that.  
10    **A. My father-in-law is diabetic and he has**  
11 **incidents where he -- his blood sugar drops low and he**  
12 **gets kind of incoherent and shaky and, like, his**  
13 **thought process is kind of slowed until it levels out.**  
14    Q. Okay. So, there was at least something about  
15 Mr. Tischer that --  
16    **A. Yes.**  
17    Q. -- suggested that to you?  
18    **A. Yes, sir.**  
19    Q. But you -- you made a comment. You said he  
20 seemed off, and I just want to understand. So, you --  
21 you've had opportunities to see Mr. Tischer when he was  
22 normal?  
23    **A. Yes, sir.**  
24    Q. And so you had a baseline?  
25    **A. Yes, sir.**



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<p style="text-align: right;">Page 26</p> <p>1 Q. Help me to understand, when you say he seems 2 off, what are you -- what are you describing there? 3 A. He seemed like he was having trouble 4 thinking, like he was foggy or slow. He took a long 5 time to respond to your questions and he just -- he 6 seemed kind of lethargic. But it wasn't anything that 7 really jumped out at me. It was just kind of like 8 not -- not normal, not a normal way for him to be 9 acting. 10 Q. Okay. Was he able to explain -- did you ask 11 him any questions about how he was acting? 12 A. I asked him if he was diabetic. He said no, 13 you know. And I said, well, you know, you don't seem 14 okay to me. And he kept saying, I'm okay. I'm okay. 15 That -- but that's about the only thing he ever said. 16 It -- it was almost like he couldn't understand what we 17 were -- 18 MS. DAWSON: Objection; speculation. 19 Q. (BY MR. BANKER) You can go ahead. 20 A. He just didn't seem to understand and he kept 21 saying, I'm okay. I'm okay. But he -- he just 22 acted -- he was acting weird. 23 Q. Okay. And I want to make sure I understand. 24 So, when you're having this conversation with 25 Mr. Tischer, when he's come to the shanty in the PTI</p>	<p style="text-align: right;">Page 28</p> <p>1 something to that effect, you know, that he was -- that 2 I didn't think he was -- I thought that, you know, he 3 should at least go home, if not go to the hospital. 4 And the manager went into the -- into 5 the shanty. And I think -- I don't know if Mr. Lowe 6 was done or what -- but I know that -- that the manager 7 sat down and started printing paperwork for them to go 8 back up. And Mr. Franchuck was telling him that he 9 wasn't -- he wasn't going to go back up with him, that 10 he needed to go to the -- the hospital or needed to go 11 home or, you know, have somebody come pick him up or 12 something, but that he didn't feel comfortable going 13 back up on another trip with him. 14 Q. Let me just stop you right there and we'll 15 come back to it. But I want to ask you a couple of 16 follow-up questions. You mentioned the MYO, the 17 manager came to the shanty. Do you know who the MYO 18 was that night? 19 A. Yeah, it was Mark -- I can't think of his 20 last name. 21 Q. Mark Marvin? 22 A. Mark Marvin, yes, sir. 23 Q. Okay. So, Mark Marvin was the MYO. While 24 Mark Marvin is talking to Franchuck and Tischer about 25 needing to go back up to Norma, where are you as that</p>
<p style="text-align: right;">Page 27</p> <p>1 vehicle, you're there outside the car door, Mr. Tischer 2 is just inside the car? 3 A. Yes, sir. 4 Q. Is Mr. Lux still in the PTI vehicle? 5 A. Yes, sir. 6 Q. Is Mr. Franchuck with you? 7 A. Standing beside me. 8 Q. Where is Mr. Lowe while this is going on? 9 A. From my recollection, he never left the 10 shanty. I believe he was inside still on the computer. 11 Q. Okay. Was there anybody else in the vicinity 12 of the shanty while you're having this conversation 13 with Mr. Tischer when he's sitting in the PTI vehicle? 14 A. No, sir. 15 Q. Okay. So, what happens next? 16 A. As we -- as we were talking to Mr. Tischer, 17 the MYO, the manager, came in his vehicle up -- he 18 pulled up by the shanty. And he got out and came over 19 to where we were and was telling Mr. Franchuck and 20 Mr. Tischer that they needed to go back up to Norma for 21 another -- to pull some more cars down. And 22 Mr. Franchuck said that he didn't feel comfortable 23 going with Mr. Tischer because he felt like there 24 was -- you know, he was -- something was wrong with 25 him. And I believe I said the same thing, you know,</p>	<p style="text-align: right;">Page 29</p> <p>1 conversation is taking place? 2 A. I was standing right there in the same place. 3 Q. So, has -- has Tischer gotten out of the PTI 4 vehicle by that point? 5 A. When -- as Mark and Neil went into the 6 shanty, Mr. Tischer got out of the vehicle and went 7 into the porta potty that was up there on the -- beside 8 the shanty. 9 Q. Okay. But at least when Mr. Marvin initially 10 comes to have this conversation with Mr. Tischer, 11 Mr. Tischer is in the PTI vehicle? 12 A. Yes. 13 Q. Okay. And this conversation where -- from 14 the time that Mark Marvin arrives until he goes into 15 the shanty to print the paperwork, how long does that 16 conversation take place? 17 A. Three to five minutes. 18 Q. Do you remember anything -- any other 19 specifics of what Mr. Franchuck said? 20 A. He said that -- 21 MS. DAWSON: Objection; hearsay. 22 Q. (BY MR. BANKER) That's okay. You can answer. 23 A. He said that he didn't -- that he didn't feel 24 comfortable going up on another trip with him and that 25 he thought that he needed to go to the hospital or have</p>



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1 somebody come and pick him up, that he didn't think he  
 2 should be driving himself home and that he wasn't going  
 3 to go back up with him, you know, nothing other than  
 4 that.

5 Q. Did Mr. Marvin make any response to these  
 6 comments that Mr. Franchuck was making?

7 A. He kept saying --

8 MS. DAWSON: Objection; hearsay.

9 A. -- if -- if -- if you guys don't go back up,  
 10 I'm going to get in trouble and that they had to go  
 11 back up.

12 Q. (BY MR. BANKER) Did you say anything in this  
 13 conversation between Marvin, Franchuck, and Tischer  
 14 when Marvin first arrives at the shanty?

15 A. I -- I -- I agreed with Mr. Franchuck. I  
 16 said that I didn't think that he should be going back  
 17 up, that he needed to, you know, go to the hospital or  
 18 have his wife come and pick him up or something like  
 19 that. And I -- when Mr. Marvin said that he was going  
 20 to get in trouble if they didn't go back up and get the  
 21 other -- the rest of the cars, I said that we weren't  
 22 real busy in the yard and that I would go up with  
 23 Mr. Franchuck and get them. And he said, no, that he  
 24 needed me in the yard and...

25 Q. Okay. So, this -- you made that offer before

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1 first arrived?

2 A. No, sir.

3 Q. Okay. So, then, I think the next thing you  
 4 mentioned is that Mr. Tischer went into a portable  
 5 toilet --

6 A. Yes, sir.

7 Q. -- that was near the shanty?

8 A. Yes, sir.

9 Q. So, tell me what you observed.

10 A. He -- I don't remember him -- anything about  
 11 when he actually -- when he went in, you know, we were  
 12 talking. And while he was in there, this conversation  
 13 happened that we were talking about, and then  
 14 Mr. Marvin went out of the shanty and got back inside  
 15 his vehicle and Mr. Franchuck followed him and was  
 16 talking to him. I didn't hear that conversation.  
 17 Mr. Tischer came out of the -- the portable toilet and  
 18 that's when I noticed that he was -- his -- he was  
 19 limping. And I asked him if he was okay. And he said  
 20 that he didn't -- he said, no, I don't think so. And  
 21 when he said that to me, his --

22 MS. DAWSON: Objection; hearsay.

23 A. -- his face was drooping. He was slurring  
 24 his words. And so I -- I said, here, sit down. And so  
 25 I sat him down. And he had a water bottle in his hand

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1 Mr. Franchuck went into the shanty to print the  
 2 paperwork?

3 A. It was around -- in the same conversation.  
 4 I'm not sure --

5 Q. Okay.

6 A. -- if it was before they went inside or not.  
 7 But it was the same conversation.

8 Q. Had you finished -- in your mind at that  
 9 point, had you finished the work for Job 10 for the  
 10 second shift that day?

11 A. Yes, sir.

12 Q. Okay. And when you made that offer to Mr. --  
 13 Mr. Marvin, he -- he told you that he had more work for  
 14 you to do in the yard?

15 A. Yes.

16 MS. DAWSON: Objection; hearsay.

17 A. Yes, sir.

18 Q. (BY MR. BANKER) Did he tell you specifically  
 19 what he wanted you to do in the yard?

20 A. I -- I don't remember.

21 Q. Okay. Now I want to pick up where you  
 22 were -- you mentioned the next thing was that  
 23 Mr. Tischer left -- well, before I do that, did Mr. Lux  
 24 participate in any way in this conversation between  
 25 Mr. Marvin, Mr. Franchuck, and Mr. Tischer when he

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1 and he couldn't get the cap off. And that's when I  
 2 went around to Mr. Marvin and said, I think -- I  
 3 said -- I said, Mark, I think he's having a stroke.  
 4 You need to call 911.

5 Q. (BY MR. BANKER) Let me just ask a couple  
 6 follow-up questions on that piece of it.

7 So, where was Marvin's vehicle parked  
 8 relative to the shanty at that point?

9 A. On the south side.

10 Q. Where was the PTI vehicle parked relative to  
 11 Marvin's vehicle?

12 A. On the west side, but nose to nose with a  
 13 gap, maybe two car lengths.

14 Q. Where are you standing when Tischer comes out  
 15 of the portable toilet?

16 A. I was standing in the doorway of the shanty,  
 17 looking that direction, west.

18 Q. How far away is the portable toilet from the  
 19 shanty?

20 A. 20 feet.

21 Q. When Mr. Tischer said he didn't think he was  
 22 okay, was that the first time Mr. Tischer had  
 23 answered the question that way?

24 MS. DAWSON: Objection; hearsay.

25 A. Yes, sir. Yes, to me, yes, sir.

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1 Q. (BY MR. BANKER) Okay. You also mentioned  
2 that you noticed that his face was drooping. Was there  
3 a particular side of his face that was drooping?  
4 **A. I believe it was his left side.**  
5 Q. And when you say "drooping," help me to  
6 understand what you mean by "drooping."  
7 **A. It looked paralyzed. It looked -- it wasn't**  
8 **moving with the other side. His eye was -- was**  
9 **drooping down.**  
10 Q. Okay. You mentioned that he was slurring his  
11 words.  
12 **A. Yes, sir.**  
13 Q. So, what did that sound like? Did it sound  
14 like someone who was intoxicated and slurring their  
15 words or was it different than that?  
16 **A. It -- different than that. It was -- I think**  
17 **a combination of, you know, not being able to move his**  
18 **mouth right. It just -- I don't know how to describe**  
19 **it other than that. I've never -- I've never seen**  
20 **somebody, you know, like that before.**  
21 Q. Well, yeah. Let me ask that question. Have  
22 you ever had a personal experience with someone who was  
23 having a stroke before?  
24 **A. No, not before.**  
25 Q. How about since?

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1 **A. No.**  
2 Q. Okay. And then I want to ask you a follow-up  
3 question about the -- the water bottle. So, he's got a  
4 water bottle and he's trying to get the cap off?  
5 **A. Yes, sir.**  
6 Q. What kind of water bottle are we talking  
7 about?  
8 **A. The little water bottles that the RR**  
9 **provides. They're plastic, but they're about half the**  
10 **size of a regular plastic --**  
11 Q. Okay.  
12 **A. -- water bottle.**  
13 Q. And so it's got the plastic twist top on it?  
14 **A. Yes, sir, a normal lid, yeah.**  
15 Q. And so how was Mr. Tischler holding it, do you  
16 remember?  
17 **A. I think he had it in his right -- holding the**  
18 **bottle in his right hand. He was trying to get the lid**  
19 **off with his left. And he just kept fumbling with it**  
20 **like he -- he couldn't get it off. And he was looking**  
21 **at it and I took it from him and -- I took the lid off**  
22 **for him and handed it back to him.**  
23 Q. Okay. How long did you watch him try to open  
24 it without success?  
25 **A. Fifteen, 20 seconds.**

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1 Q. Okay. So, you had enough time to watch him  
2 to determine that he was -- he was really trying to  
3 open it and not succeeding?  
4 **A. Yes, sir.**  
5 Q. And then you went to Mr. Marvin -- Marvin was  
6 in his vehicle at that point?  
7 **A. Yes, sir.**  
8 Q. Where was Mr. Franchuck at that point?  
9 **A. Speaking to Mr. Marvin.**  
10 Q. Okay. And you said, I think Tischler is  
11 having a stroke and call 911. You said that to  
12 Mr. Marvin?  
13 **A. I said, I -- Mark, I think he's having a**  
14 **stroke. You need to call 911.**  
15 Q. What did Mr. Marvin say?  
16 **A. He said, okay. Let's get him in the cab and**  
17 **have the cab driver follow him back to the yard office.**  
18 Q. Have the cab driver follow Marvin back to the  
19 yard office?  
20 **A. Yes, sir.**  
21 Q. Let me back up just a step because I don't  
22 know that I asked this. So, are you able to establish  
23 a time -- let's -- let's start with -- let me go back a  
24 couple steps. So, when Mr. Tischler arrives in the PTI  
25 vehicle, if we have them arriving in the yard at

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1 approximately 8:00 p.m., can you -- can you say when  
2 the PTI vehicle arrived at the shanty?  
3 **A. No more than ten minutes.**  
4 Q. Okay. And then relative to that, what time  
5 is it when Mr. Marvin arrives at the shanty?  
6 **A. Three to five minutes later.**  
7 Q. Okay. So, by my calculation, that takes us  
8 to about 8:15?  
9 **A. Yes, sir.**  
10 Q. And so what you're describing here when  
11 you're having this conversation with Mr. Marvin,  
12 saying, I think he's having a stroke, let's call 911,  
13 what time is that?  
14 **A. No more than 20 minutes after they came into**  
15 **the yard, around 8:20.**  
16 Q. Okay. And so when you -- when you say that  
17 to Mr. Marvin, he says, okay, let's get him in the cab  
18 and have the cab follow back --  
19 **A. To the --**  
20 Q. -- to the yard office --  
21 **A. Yes, sir.**  
22 Q. -- was there anything more said at that  
23 point?  
24 **A. Not by -- I don't -- not that I recall. I**  
25 **didn't say anything else. I -- I believe -- I believe**

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<p style="text-align: right;">Page 38</p> <p>1 Mr. Franchuck helped. But we got Jake in the cab with 2 Mr. Lux. And he needed help getting there. And we 3 helped him in. And Mr. Marvin turned around and drove 4 out of the yard and Mr. Lux and Mr. Tischer followed 5 him. 6 Q. Did you observe Mr. Marvin on the 7 telephone -- on his telephone at any point during the 8 time that he was at the shanty? 9 A. No. 10 Q. So, the people that left the shanty in 11 vehicles were Marvin in his car and Lux and Tischer in 12 the PTI vehicle? 13 A. Yes, sir. 14 Q. And everyone else stayed behind? 15 A. Yes, sir. 16 Q. To that point, do you know whether anyone had 17 called 911? 18 A. I'm not aware. 19 Q. When was the next involvement that you had or 20 what was the next thing that you recall about that 21 night? 22 A. I helped Mr. Franchuck put his locomotives 23 away, get switches and things so we could put it over 24 in the engine storage tracks. And then I came back up 25 to the east end where Mr. Lowe was. And shortly after</p>	<p style="text-align: right;">Page 40</p> <p>1 A. I'm not sure the exact time. 2 Q. Okay. What is the next thing that you 3 remember about that evening? 4 A. We went back to the depot. We were done for 5 the night and we went back to the depot and I don't 6 remember what Mr. Franchuck did. But I believe I 7 stayed for a little bit until I could -- you know, 8 it was -- my shift was over. And then I tied up and 9 went home. 10 Q. Did you have any further conversation other 11 than what you've described with Mr. Tischer from the 12 point that he leaves the shanty? 13 A. No. 14 Q. Did you talk at all further with Mr. Marvin 15 that night? 16 A. No. 17 Q. How about Mr. Lux? 18 A. No. 19 Q. How about Mr. Lowe? 20 A. No. 21 Q. How about Mr. Franchuck? 22 A. Not that -- not -- I think I -- I think we 23 talked about, you know, kind of talked about the 24 incident and, you know, that we hoped that Jake was 25 okay and, you know, things like that, but nothing --</p>
<p style="text-align: right;">Page 39</p> <p>1 that, Mr. Marvin called on the radio and asked -- 2 Mr. Franchuck was still -- was up there still -- up 3 there with us. He had came back in our cab. We were 4 going to take him back to the depot. We stopped to 5 pick Mr. Lowe up, I think, is how it was. And 6 Mr. Marvin called Mr. Franchuck on the radio and 7 asked -- 8 MS. DAWSON: Objection; hearsay. 9 A. -- how long Mr. Tischer had had symptoms. 10 Q. (BY MR. BANKER) And did you hear 11 Mr. Franchuck respond? 12 A. He said -- 13 MS. DAWSON: Objection; hearsay. 14 A. -- he said that he had been -- he had been 15 kind of off for probably an hour or two but that he 16 didn't start, you know, showing what we thought was the 17 actual stroke symptoms until just before -- well, when 18 Mr. Marvin was up there. 19 Q. (BY MR. BANKER) When you say "when Mr. Marvin 20 was up there," you mean at -- at the shanty? 21 A. Yes, sir, you know, 8:15, 8:20, somewhere 22 around in that time frame. 23 Q. Do you know what time it was that Mr. Marvin 24 was having this communication with Mr. Franchuck about 25 when Mr. Tischer first had symptoms?</p>	<p style="text-align: right;">Page 41</p> <p>1 nothing new. 2 Q. Okay. Do you know whether 911 was called at 3 some point? 4 MS. DAWSON: Objection; speculation. 5 A. I was told 911 was called at one point but I 6 don't know -- you know, not firsthand. 7 Q. (BY MR. BANKER) Who told you that? 8 A. The -- Charlie from your law firm. 9 Q. Okay. 10 A. I don't know his last name. 11 Q. Okay. 12 A. But that's who told me. 13 Q. But on that night, were you aware that -- 14 A. No. 15 Q. -- 911 had been called? 16 A. I mean, I was aware that 911 had been called 17 because when Mr. Marvin called on the radio, he was 18 talking to paramedics. But I don't know who called 911 19 or anything like that. 20 Q. Okay. How do you know that Mr. Marvin was 21 talking to paramedics when he was on the radio? 22 A. I believe he said that. If I recall right, 23 he said the paramedics -- the paramedics want to know 24 how -- how -- how long he's had the symptoms. 25 Q. Okay. Had there been any discussion before</p>

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1 Mr. Marvin asked that question about how long  
 2 Mr. Franchuck -- or Mr. Tischer had been having  
 3 symptoms?  
 4 **A. Mr. Franchuck -- I think he -- he said to**  
 5 **me --**  
 6 MS. DAWSON: Objection; hearsay.  
 7 **A. -- at some point in the conversations that we**  
 8 **had during this that Mr. Tischer had been acting funny**  
 9 **their whole trip up there but he -- he couldn't put his**  
 10 **finger on what was wrong with him.**  
 11 Q. (BY MR. BANKER) What was it that caused you  
 12 to say that you thought Mr. Tischer was having a stroke  
 13 when you were at the shanty?  
 14 **A. He had all the symptoms that I've -- you**  
 15 **know, I -- I went through CPR classes and first aid**  
 16 **classes and, you know, and you read things and see**  
 17 **things on the news about, you know, recognizing stroke**  
 18 **symptoms. He had all the signs that I've been told and**  
 19 **seen of stroke symptoms.**  
 20 Q. Okay. So, that was just part of your common  
 21 knowledge?  
 22 **A. Yes, sir.**  
 23 Q. Had you ever had a CPR or first aid class  
 24 through UP?  
 25 **A. No.**

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1 Q. Do you know whether UP offered those kind of  
 2 classes?  
 3 **A. No, I'm not sure.**  
 4 Q. What was your next involvement in this, if --  
 5 if there was any?  
 6 **A. The next involvement I would have had would**  
 7 **have been speaking to Charlie from -- and that's**  
 8 **basically -- that's really the only involvement I had**  
 9 **with anybody after that in the --**  
 10 Q. Did you ever speak with any -- or did you  
 11 ever provide a recorded statement to anybody?  
 12 **A. I don't believe so.**  
 13 Q. Did you ever find out more about what  
 14 happened to Mr. Tischer that night?  
 15 **A. I -- I did -- I found out that he had passed**  
 16 **away from Charlie -- because that was -- and, you know,**  
 17 **found out that he had passed away and, you know, that**  
 18 **they would need me to give a deposition and stuff. But**  
 19 **other than that, no.**  
 20 Q. Did you have any conversations with anyone  
 21 about this incident that we haven't already talked  
 22 about?  
 23 **A. I believe I spoke to Mr. Tischer's brother,**  
 24 **Josh. I spoke to him -- he called me to let me -- to**  
 25 **tell me that -- he also called me to let me know that**

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1 **Jake had passed away after I spoke to Charlie. But I**  
 2 **don't remember -- I didn't discuss the event with him.**  
 3 Q. Okay.  
 4 **A. He just called and -- he said, you know, I**  
 5 **wanted to let you know that Jake had passed away. And**  
 6 **I said, you know, I'm -- I'm sorry, you know. But we**  
 7 **didn't talk about the event.**  
 8 Q. Did you know Josh Tischer previous to --  
 9 **A. From the railroad.**  
 10 Q. How did you know Josh Tischer from the  
 11 railroad?  
 12 **A. He was a conductor for a while and then he**  
 13 **got furloughed and he never came back. I -- I don't**  
 14 **know. He just never came back.**  
 15 Q. Did you make any notes about what happened  
 16 that night?  
 17 **A. I did make notes. And then when we moved,**  
 18 **they're in the storage unit in Wisconsin. So...**  
 19 Q. Okay. What did you -- what were you  
 20 documenting in your notes?  
 21 **A. I just wrote it down because I knew that this**  
 22 **would happen and that I would, you know, probably**  
 23 **forget details, you know, some of the details. But**  
 24 **then, I guess, they got misplaced in a box or something**  
 25 **in storage.**

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1 Q. Okay. Did Mr. Franchuck ever provide any  
 2 additional details about what he thought was off with  
 3 Mr. Tischer when they were working together?  
 4 **A. No more than he provided that -- that night.**  
 5 Q. When Mr. Tischer came out of the portable  
 6 toilet at the shanty, did he have a brake stick with  
 7 him?  
 8 **A. Yes.**  
 9 Q. Did he drop the brake stick when he came out  
 10 of the toilet?  
 11 **A. Yes -- well, not when he first came out. He**  
 12 **got about halfway to the -- he got about halfway**  
 13 **between the toilet and the -- and he dropped it and he**  
 14 **didn't pick it -- he didn't bend over to pick it back**  
 15 **up. He just dropped it and kind of looked at it and**  
 16 **that's when I was helping him into the shanty to sit**  
 17 **down.**  
 18 Q. Okay. Did you think that was unusual --  
 19 **A. Yes.**  
 20 Q. -- as well, that he would drop his brake  
 21 stick and not pick it up?  
 22 **A. Yes.**  
 23 Q. Why is that?  
 24 **A. He -- to me it looked like he couldn't pick**  
 25 **it up. And that's what led me to go over to him and**

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<p style="text-align: right;">Page 46</p> <p>1 <b>help him walk into the shanty.</b></p> <p>2 Q. Okay. This -- you kind of were talking with</p> <p>3 me about when Marvin was saying that he needed</p> <p>4 Franchuck and Tischer to go back up to Norma, and if he</p> <p>5 didn't, he would get in trouble. Did you ever have an</p> <p>6 understanding of who was going to get Mr. Marvin in</p> <p>7 trouble?</p> <p>8 MS. DAWSON: Objection; hearsay and</p> <p>9 speculation.</p> <p>10 <b>A. It would have been -- he never said</b></p> <p>11 <b>specifically, but I assume it was his boss.</b></p> <p>12 Q. (BY MR. BANKER) Do you know who his boss was?</p> <p>13 <b>A. His boss at the time -- I believe at the time</b></p> <p>14 <b>his boss was still Josh Shaver or -- yeah, I believe it</b></p> <p>15 <b>was. But I'm not positive.</b></p> <p>16 Q. Okay. Had you ever worked the -- the run to</p> <p>17 Norma?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. And was that a regular run out of the Altoona</p> <p>20 yard?</p> <p>21 <b>A. Yes, sir.</b></p> <p>22 Q. Was it usual to need to do two runs in one</p> <p>23 day?</p> <p>24 <b>A. Sometimes they did two. They usually only</b></p> <p>25 <b>did one. But -- but on occasion, they would do two.</b></p>	<p style="text-align: right;">Page 48</p> <p>1 Q. (BY MR. BANKER) Okay.</p> <p>2 <b>A. -- if anything.</b></p> <p>3 Q. But putting Mr. Franchuck -- helping</p> <p>4 Mr. Franchuck put his power away was not part of Job 10</p> <p>5 necessarily?</p> <p>6 <b>A. No.</b></p> <p>7 Q. You were just helping out?</p> <p>8 <b>A. Yes, sir.</b></p> <p>9 Q. Did you ever go to the depot office on the</p> <p>10 night of August 12th, 2017, after Mr. Tischer left the</p> <p>11 shanty area?</p> <p>12 <b>A. We went back to the depot to tie up that</b></p> <p>13 <b>evening.</b></p> <p>14 Q. Okay. So, that's where the tying up takes</p> <p>15 place?</p> <p>16 <b>A. Yes, sir.</b></p> <p>17 Q. By the time you went back to the -- what time</p> <p>18 was it that you went back to the depot to tie up?</p> <p>19 <b>A. I usually got off at 9:30. So, somewhere</b></p> <p>20 <b>around that time, 9:00, 9:00 o'clock to 9:30.</b></p> <p>21 Q. When you went back to the depot, was there</p> <p>22 anyone else there?</p> <p>23 <b>A. No.</b></p> <p>24 Q. Did you ever see or hear any evidence of an</p> <p>25 ambulance being there?</p>
<p style="text-align: right;">Page 47</p> <p>1 Q. Do you know anything about what was happening</p> <p>2 on August 12th, 2017, that was causing them to need to</p> <p>3 do two?</p> <p>4 MS. DAWSON: Objection; speculation.</p> <p>5 <b>A. No.</b></p> <p>6 Q. (BY MR. BANKER) Did you ever hear</p> <p>7 Mr. Tischer, while he was at the shanty, be offered</p> <p>8 medical care?</p> <p>9 <b>A. No.</b></p> <p>10 Q. And to follow up on that, did you ever hear</p> <p>11 him refuse an offer of medical care?</p> <p>12 <b>A. No.</b></p> <p>13 Q. While you were at the shanty, did you ever</p> <p>14 hear Mr. Lux say anything about Mr. Tischer?</p> <p>15 MR. COHEN: Objection; hearsay.</p> <p>16 <b>A. Not that I recall.</b></p> <p>17 Q. (BY MR. BANKER) Okay. After you offered to</p> <p>18 go back to Norma in Mr. Tischer's place and Mr. Marvin</p> <p>19 told you he had more work for you to do in the yard,</p> <p>20 did you, in fact, do more work in the yard?</p> <p>21 MS. DAWSON: Objection; form, hearsay.</p> <p>22 <b>A. I don't -- I don't recall doing any work</b></p> <p>23 <b>after that. I don't believe we -- other than helping</b></p> <p>24 <b>Mr. Franchuck put his power away, I don't think we did</b></p> <p>25 <b>much after that --</b></p>	<p style="text-align: right;">Page 49</p> <p>1 <b>A. No.</b></p> <p>2 Q. Do you know who was at the depot -- well, do</p> <p>3 you know whether Mr. Tischer made it to the depot at</p> <p>4 some point after he left the shanty?</p> <p>5 MS. DAWSON: Objection; speculation,</p> <p>6 foundation.</p> <p>7 <b>A. Not that -- not -- not -- not firsthand, no.</b></p> <p>8 Q. (BY MR. BANKER) Okay. Did you ever talk with</p> <p>9 anyone who -- about this incident who told you that</p> <p>10 they were at the depot when the ambulance arrived?</p> <p>11 <b>A. No.</b></p> <p>12 Q. Did you ever -- did you know Jessica Tischer,</p> <p>13 Mr. Tischer's wife?</p> <p>14 <b>A. No.</b></p> <p>15 Q. Did you ever speak with her on the evening of</p> <p>16 August 12th, 2017?</p> <p>17 <b>A. No.</b></p> <p>18 Q. Or afterwards?</p> <p>19 <b>A. No.</b></p> <p>20 Q. Was there ever any talk at the shanty with</p> <p>21 Mr. Tischer about -- was there any -- ever anything</p> <p>22 definitive said about whether he was going home?</p> <p>23 <b>A. No.</b></p> <p>24 Q. Was there ever anything definitive said about</p> <p>25 whether or not he was going to drive himself home?</p>

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1       **A. No, not that I recall.**  
2       Q. Okay. If there -- so, when you -- you talked  
3 about hearing some communications over the radio, both  
4 when Tischer and Franchuck are coming into Altoona as  
5 well as when Franchuck is calling for -- or I'm sorry,  
6 Marvin is calling for Franchuck on the radio. Was  
7 there a particular channel that was used in the Altoona  
8 yard to have communications like that?  
9       **A. Yes, sir, 7171.**  
10      Q. 7171?  
11      **A. Yes, sir.**  
12      Q. And was that -- was that consistently the  
13 yard channel during the time that you worked in the  
14 Altoona yard?  
15      **A. Yes, sir.**  
16      Q. Did you ever -- do you know who  
17 Mr. Mike Swentik is -- S-w-e-n --  
18      **A. Yes, sir.**  
19      Q. -- t-i-k?  
20      **A. Yes, sir.**  
21      Q. Who is he?  
22      **A. He was an emptier.**  
23      Q. And did you see or talk to Mr. Swentik on  
24 that evening of August 12th, 2017?  
25      **A. No, sir.**

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1       Q. Do you know who Tim Dold is? D-o-l-d?  
2       **A. Tim, yes, sir.**  
3       Q. Who is he?  
4       **A. He was a conductor, switchman.**  
5       Q. Was he present in the Altoona yard on the  
6 evening of August 12th, 2017?  
7       **A. Not that I recall.**  
8       Q. Okay. And let me ask it a different way.  
9 When we're focused on this time at the shanty on the  
10 east end of the Altoona yard after Tischer and  
11 Franchuck come back into Altoona --  
12      **A. Yes, sir.**  
13      Q. -- until they leave there, was there anybody  
14 else who was present in the shanty, in the vicinity of  
15 the shanty?  
16      **A. Not -- I just recall it being the people we**  
17 **talked about. I don't remember anybody else.**  
18      Q. (BY MR. BANKER) Okay. Do you know who  
19 Jessica Carson is? C-a-r-s-o-n?  
20      **A. No.**  
21      Q. So, let me switch gears. I just want to show  
22 you a couple of documents.  
23             MR. BANKER: Would you mark this as a  
24 new exhibit.  
25             (Exhibit 31 was marked)

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1       Q. (BY MR. BANKER) I'm showing you what's been  
2 marked for identification as Exhibit 31. Do you know  
3 what this document is?  
4       **A. Yeah, it's the Altoona yard.**  
5       Q. And I -- well, I understand it to be a track  
6 chart of the --  
7       **A. Yes.**  
8       Q. -- Altoona yard. So, while it's not  
9 necessarily to scale, it shows the schematic layout --  
10      **A. Right.**  
11      Q. -- of the Altoona yard?  
12      **A. Yes, sir.**  
13      Q. And would you be able to mark this document  
14 to show the relative location of the shanty --  
15      **A. Yes, sir.**  
16      Q. -- where you were at that evening?  
17      **A. Yes, sir.**  
18      Q. I'm going to go ahead and have you do that.  
19 Why don't you just make a 1 and circle it on this  
20 document where you would locate the shanty.  
21      **A. Somewhere in that general vicinity.**  
22      Q. Okay. And do you see the depot located on  
23 this --  
24      **A. Yes, sir.**  
25      Q. -- schematic as well?

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1       **A. Yes, sir.**  
2       Q. Okay. And it actually is printed on the --  
3 on the document --  
4       **A. Yes, sir.**  
5       Q. -- in the center -- bottom center below  
6 Track 1 -- I guess to the west of Track 166 on the  
7 document?  
8       **A. Yes, sir.**  
9       Q. And so that's the depot office that you've  
10 described as using for the tie-up?  
11      **A. Yes, sir.**  
12      Q. Okay. Can I get that back from you? Thank  
13 you.  
14             MR. BANKER: Mark that as a new exhibit  
15 as well, please.  
16             (Exhibit 32 was marked)  
17      Q. (BY MR. BANKER) I'm showing you what's been  
18 marked for identification as Exhibit 32. Do you  
19 recognize this document?  
20      **A. No.**  
21      Q. I'll represent to you it -- it's been  
22 explained to me as a printout of your training -- of  
23 your UP training history reflecting the various  
24 coursework and training that you've had from UP.  
25      **A. Yes, sir.**



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<p style="text-align: right;">Page 54</p> <p>1 Q. Do you recognize it?</p> <p>2 <b>A. I recognize the courses, yes, sir.</b></p> <p>3 Q. Okay.</p> <p>4 <b>A. I've just never seen it in this form.</b></p> <p>5 Q. If you would, look through this document.</p> <p>6 What I'm -- what I'm looking for is any first aid or --</p> <p>7 I guess first aid training that you would have received</p> <p>8 as recorded in this history. But I'll tell you, from</p> <p>9 the top, that I don't believe that there is any such</p> <p>10 history reflected. Do you see anything different?</p> <p>11 <b>A. No.</b></p> <p>12 Q. And so when you said to Mr. Marvin, I think</p> <p>13 Mr. Tischer is having a stroke, you were relying on</p> <p>14 kind of your life experience and common sense rather</p> <p>15 than any formal training that you received from UP?</p> <p>16 <b>A. Yes, sir.</b></p> <p>17 MS. DAWSON: Objection; form.</p> <p>18 MR. BANKER: Let me just take a moment</p> <p>19 and -- we can go off the record. I just want to review</p> <p>20 my notes. I think I may be done.</p> <p>21 THE VIDEOGRAPHER: Off the record at</p> <p>22 12:18.</p> <p>23 (Recess from 12:18 p.m. to 12:19 p.m.)</p> <p>24 THE VIDEOGRAPHER: Back on the record at</p> <p>25 12:19.</p>	<p style="text-align: right;">Page 56</p> <p>1 <b>Mr. Marvin to call 911 because the managers carry</b></p> <p>2 <b>phones with them.</b></p> <p>3 MR. BANKER: Okay. I don't have any</p> <p>4 further questions. Thank you.</p> <p>5 EXAMINATION</p> <p>6 BY MS. DAWSON:</p> <p>7 Q. Good afternoon, sir. I introduced myself a</p> <p>8 moment ago. My name is Brody Dawson. I represent</p> <p>9 Union Pacific.</p> <p>10 I want to go through the timeline with</p> <p>11 you again just to make sure that we have a clear course</p> <p>12 of events from that afternoon. Okay?</p> <p>13 <b>A. Okay.</b></p> <p>14 Q. I believe you testified earlier that you saw</p> <p>15 Mr. Tischer around 1430, 1500 on August 12th; is that</p> <p>16 correct?</p> <p>17 <b>A. Yes, ma'am.</b></p> <p>18 Q. And you said that at that point in time,</p> <p>19 nothing out of the ordinary, he seemed normal?</p> <p>20 <b>A. Yes, ma'am.</b></p> <p>21 Q. Okay. And then you didn't see him again</p> <p>22 until after he'd come back into the yard; is that</p> <p>23 correct?</p> <p>24 <b>A. Correct.</b></p> <p>25 Q. Okay. And it's your understanding that he</p>
<p style="text-align: right;">Page 55</p> <p>1 Q. (BY MR. BANKER) Just looking at my notes,</p> <p>2 there's one other area I want to ask you a couple</p> <p>3 questions about. I take it, you did not call 911 on</p> <p>4 the evening of August 12th, 2017?</p> <p>5 <b>A. No.</b></p> <p>6 Q. Nor are you aware of whether anyone else did?</p> <p>7 <b>A. No.</b></p> <p>8 Q. Did it -- you -- earlier you testified that</p> <p>9 you mentioned calling 911 to Mr. Marvin when he was at</p> <p>10 the shanty?</p> <p>11 <b>A. Yes, sir.</b></p> <p>12 Q. Did you mention calling 911 to anyone else?</p> <p>13 <b>A. Oh, Mr. -- well, Mr. Franchuck was standing</b></p> <p>14 <b>there when I said that to Mr. Marvin. But other than</b></p> <p>15 <b>that, no.</b></p> <p>16 Q. Sure. Did it occur to you to call 911</p> <p>17 yourself that evening of August 12th, 2017?</p> <p>18 <b>A. I didn't have a phone because you're not</b></p> <p>19 <b>allowed to carry your phone with you when you're on</b></p> <p>20 <b>duty.</b></p> <p>21 Q. Sure.</p> <p>22 <b>A. So, I didn't have a phone with me. And the</b></p> <p>23 <b>only other way I could have called was we would have</b></p> <p>24 <b>had to call the dispatcher, who's in Omaha, and get him</b></p> <p>25 <b>to call 911. So, I felt like it was faster to get</b></p>	<p style="text-align: right;">Page 57</p> <p>1 and Mr. Franchuck arrived back in the yard sometime</p> <p>2 around 8:00 o'clock?</p> <p>3 <b>A. Yes, ma'am.</b></p> <p>4 Q. Okay. And then you understand from your</p> <p>5 experience that then Mr. Tischer had to perform some</p> <p>6 work, correct?</p> <p>7 <b>A. Yes, ma'am.</b></p> <p>8 Q. And that work would include tying down a</p> <p>9 number of hand brakes?</p> <p>10 <b>A. Yes, ma'am.</b></p> <p>11 Q. Do you know how many hand brakes Mr. Tischer</p> <p>12 tied down that night?</p> <p>13 <b>A. I don't know exact number, no.</b></p> <p>14 Q. Okay. And I believe you said then that you</p> <p>15 were at the shanty when Mr. Franchuck arrived</p> <p>16 approximately five minutes after 8:00 o'clock; is that</p> <p>17 correct?</p> <p>18 <b>A. Yes, ma'am.</b></p> <p>19 Q. Okay. And then you said that puts us at</p> <p>20 about 8:05 p.m.?</p> <p>21 <b>A. Approximately, yes, sir.</b></p> <p>22 Q. And then I believe you told Mr. Banker that</p> <p>23 then Mr. Tischer arrived in the PTN -- PTI van</p> <p>24 approximately ten minutes later around 8:15; is that</p> <p>25 correct?</p>



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1     **A. Yes, ma'am.**  
2     Q. Okay. So, now we're at 8:15. And it's at  
3     8:15 then when you and Mr. Franchuck approach the PTI  
4     van; is that correct?  
5     **A. Yes, ma'am.**  
6     Q. Okay. And you said you had a conversation  
7     that lasted approximately three to five minutes?  
8     **A. Yes, ma'am.**  
9     Q. Okay. So, now we're at about 8:20; is that  
10    right?  
11    **A. Yes, ma'am.**  
12    Q. Okay. At that point in time, then, does  
13    Mr. Marvin arrive?  
14    **A. Somewhere around in that time, yes, ma'am.**  
15    Q. Okay. So, Mr. Marvin arrives around 8:20.  
16    And are you present when Mr. Marvin and Mr. Franchuck  
17    and Mr. Tischer have a conversation?  
18    **A. Yes.**  
19    Q. Okay. And is it that conversation had before  
20    Mr. Tischer walks to a portable toilet?  
21    **A. They had -- they -- so, we -- there was the**  
22    **conversation while Mr. Tischer was still in the**  
23    **vehicle. And then Mr. Marvin walked to go into the**  
24    **shanty. Me and Mr. Franchuck followed him. And that**  
25    **was when Mr. Tischer went into the portable toilet.**

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1     Q. Okay. So, Mr. Tischer goes into the portable  
2     toilet sometime around 8:20, 8:25 p.m.?  
3     **A. Somewhere around in that time.**  
4     Q. Okay. And then you and Mr. Marvin and  
5     Mr. Franchuck and Mr. Lowe are inside the shanty,  
6     correct?  
7     **A. Yes, ma'am.**  
8     Q. And you were inside the shanty for a period  
9     of time while Mr. Tischer is in the portable toilet,  
10    correct?  
11    **A. Yes.**  
12    Q. Okay. And it's not until Mr. Tischer comes  
13    out of the portable toilet that you noticed those  
14    symptoms that you told Mr. Banker about, correct?  
15    **A. I didn't notice this -- what I would term --**  
16    **what I've seen as stroke symptoms until then. He -- he**  
17    **had some symptoms before, but I didn't know what**  
18    **exactly they were.**  
19    Q. Right. I believe you said that when he --  
20    before he went into the portable toilet, you weren't  
21    sure if he had some sort of diabetic condition. He  
22    just seemed off?  
23    **A. He -- he just seemed off, yes, yes, ma'am.**  
24    Q. And so it was not until after Mr. Tischer  
25    came out of the portable toilet sometime around

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1     probably 8:30, 8:35 that then you saw these symptoms  
2     that you interpreted as a stroke?  
3     **A. Yeah, it was when he come out. I don't**  
4     **know -- I mean, I can't really tell the time. I don't**  
5     **know if it was that late. But, yeah, it was when he**  
6     **came out of the portable toilet that I noticed the**  
7     **stroke -- what I took as stroke symptoms.**  
8     Q. Okay. And just looking at the timeline,  
9     knowing that we know that he didn't arrive at the  
10    shanty until 8:15 and then they had a five-minute  
11    conversation, then him going into the portable toilet.  
12    It's at least 8:25 or 8:30 that he's coming out of the  
13    portable toilet because he had to spend some time in  
14    there, correct?  
15    **A. I couldn't tell you how long he was in the**  
16    **portable toilet. But, I mean, he -- the conversation**  
17    **was ongoing while he was in there. So, I mean, it was**  
18    **hard for me to judge the time. You know, I don't**  
19    **remember how long he stayed in -- in there. It could**  
20    **have been a minute or two.**  
21    Q. Okay. You don't remember how long he was in  
22    the portable toilet?  
23    **A. No, no.**  
24    Q. Okay. So, then Mr. Tischer comes out of the  
25    portable toilet sometime after 8:25 and that's when you

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1     noticed the signs and symptoms that you said had  
2     changed and then you observed what you thought were  
3     stroke symptoms?  
4     **A. Yes, ma'am.**  
5     Q. Okay. When you were in the shanty speaking  
6     with Mr. Franchuck and Mr. Marvin, were you a part of  
7     that conversation or were you just off to the side?  
8     **A. No, I was part.**  
9     Q. Okay. And then Mr. Tischer comes out of the  
10    portable toilet. Are you observing the signs and  
11    symptoms of him from inside the shanty or do you go  
12    outside?  
13    **A. Mr. Franchuck and Mr. Marvin at that point**  
14    **had walked -- Mr. Marvin had walked around to the side**  
15    **to get in his vehicle and Mr. Franchuck followed him**  
16    **arguing about not going back up there. And I stood up**  
17    **and I was in the doorway of the shanty when Mr. Tischer**  
18    **came out of the -- the portable toilet.**  
19    Q. Okay. So., Mr. Marvin and Mr. Franchuck were  
20    over by Mr. Marvin's car. You were in the door of the  
21    shanty when Mr. Tischer came out of the portable  
22    toilet?  
23    **A. Yes, ma'am.**  
24    Q. And then it was at that point after  
25    Mr. Tischer had come out of the portable toilet that

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<p style="text-align: right;">Page 62</p> <p>1 you had the interaction with him, correct?</p> <p>2 <b>A. Yes, ma'am.</b></p> <p>3 Q. At no point in time did Mr. Tischer ask you</p> <p>4 to call 911; isn't that correct?</p> <p>5 <b>A. No.</b></p> <p>6 Q. That's correct?</p> <p>7 <b>A. Yes, ma'am.</b></p> <p>8 Q. All right. And then when Mr. Tischer comes</p> <p>9 out of the portable toilet, a decision is made that</p> <p>10 he's going to get in the PTI van to go home; is that</p> <p>11 correct?</p> <p>12 <b>A. The decision was made that he was going to</b></p> <p>13 <b>get in the PTI van and go back to the depot. I don't</b></p> <p>14 <b>know about where he was going to go other than back to</b></p> <p>15 <b>the depot.</b></p> <p>16 Q. Did you hear any conversation between</p> <p>17 Mr. Marvin and Mr. Tischer after Mr. Tischer came out</p> <p>18 of the portable toilet?</p> <p>19 <b>A. No.</b></p> <p>20 Q. And you don't know what the plan was for when</p> <p>21 Mr. Tischer got in the PTI van, where he was going from</p> <p>22 there?</p> <p>23 <b>A. No.</b></p> <p>24 Q. Okay. You mentioned to Mr. Banker that you</p> <p>25 spoke to an individual named Charlie from Mr. Banker's</p>	<p style="text-align: right;">Page 64</p> <p>1 <b>A. No.</b></p> <p>2 Q. Did he ask you to provide him any</p> <p>3 documentation?</p> <p>4 <b>A. No.</b></p> <p>5 Q. At any point in time, have you provided</p> <p>6 Charlie with any documentation?</p> <p>7 <b>A. No, I've never -- I've never met him, never</b></p> <p>8 <b>had any contact with him other than on the phone.</b></p> <p>9 Q. Okay. You said he called you one to two days</p> <p>10 after the incident. When was the next time he called</p> <p>11 you?</p> <p>12 <b>A. I believe it was when he called and told me</b></p> <p>13 <b>that Mr. Tischer had passed away. I'm -- I think it</b></p> <p>14 <b>was maybe a week or two. But I'm not sure of the exact</b></p> <p>15 <b>date.</b></p> <p>16 Q. You said a week or two after Mr. Tischer</p> <p>17 passed away or a week or two after the incident?</p> <p>18 <b>A. No, no, a week or two after the incident.</b></p> <p>19 Q. Okay. And Mr. Charlie Schultz called you and</p> <p>20 let you know that Mr. Tischer had passed away?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. Is that the first person who notified you?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. You mentioned that, when Charlie talked to</p> <p>25 you, that he -- he told you that you would have to give</p>
<p style="text-align: right;">Page 63</p> <p>1 law firm. Do you know Charlie's last name?</p> <p>2 <b>A. No.</b></p> <p>3 Q. Okay. When was the first time you met</p> <p>4 Charlie?</p> <p>5 <b>A. I don't think I've ever met him. But I</b></p> <p>6 <b>talked to him on the phone maybe the day or two after</b></p> <p>7 <b>August 12th.</b></p> <p>8 Q. How did that contact from Charlie come one to</p> <p>9 two days after August 12th? How did that contact come</p> <p>10 to you?</p> <p>11 <b>A. He called me.</b></p> <p>12 Q. Do you know how he got your number?</p> <p>13 <b>A. No.</b></p> <p>14 Q. What did he say when he called you?</p> <p>15 <b>A. He just talked -- he just wanted to, you</b></p> <p>16 <b>know, wanted to know what -- you know, kind of my take</b></p> <p>17 <b>on what had happened and, you know, if -- basically,</b></p> <p>18 <b>that was it, kind of, you know, my take on what</b></p> <p>19 <b>happened and nothing really other than that.</b></p> <p>20 Q. Did he identify himself as working for a law</p> <p>21 firm?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. Okay. And when you met with -- or when you</p> <p>24 spoke with him on the phone, did Mr. Charlie Schultz</p> <p>25 ask you to meet with him at any point in time?</p>	<p style="text-align: right;">Page 65</p> <p>1 a deposition?</p> <p>2 <b>A. Well, he didn't say I had to. But he said</b></p> <p>3 <b>that, you know, they might want me to, you know, at</b></p> <p>4 <b>some point. So...</b></p> <p>5 Q. And was that in the conversation one to two</p> <p>6 days after the incident that Charlie told you that --</p> <p>7 that, you know, they may want you to give a deposition</p> <p>8 at some point?</p> <p>9 <b>A. I believe it was. It could have been the</b></p> <p>10 <b>second one. I'm not real sure.</b></p> <p>11 Q. Did Charlie ask you to help with the case?</p> <p>12 <b>A. No, not -- other than that he told me I might</b></p> <p>13 <b>have to give a deposition, no.</b></p> <p>14 Q. When were you contacted about giving the</p> <p>15 deposition today?</p> <p>16 <b>A. I -- so, I guess somebody didn't -- they</b></p> <p>17 <b>didn't have my address here. Somebody went to my mom</b></p> <p>18 <b>and dad's house to tell them that, you know, they</b></p> <p>19 <b>needed to speak with me. And then I got Charlie's</b></p> <p>20 <b>number from that -- from that person, whoever he was.</b></p> <p>21 <b>I can't remember his name. He was, like, somebody who</b></p> <p>22 <b>goes and, you know, gives people subpoenas. I got</b></p> <p>23 <b>Charlie's number from him because I had lost my old</b></p> <p>24 <b>phone. So, I didn't have anybody's number anymore.</b></p> <p>25 <b>And then I called him. That's how I found out. So, it</b></p>

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1 was maybe a week -- last week.  
2 Q. So, did somebody give your parents Charlie's  
3 number for you to contact Charlie?  
4 A. No, no, they -- the person who went to my  
5 parents' house to serve the subpoena gave them a  
6 card -- his card. I called him and he gave me  
7 Charlie's number.  
8 Q. Understood. And so then when did you talk to  
9 Charlie?  
10 A. Last week sometime.  
11 Q. And what did Charlie tell you?  
12 A. He just -- he asked me -- he said that  
13 they -- you know, that they needed me to give a  
14 deposition and he wanted to know if I could come -- if  
15 I had, you know, the time to come to  
16 Minneapolis-St. Paul. And I said, you know, that I  
17 would check my schedule and see. And then I called him  
18 back and I said, no. And he said, well, they could  
19 come to you. And then he told -- sent me the details  
20 of today. That was it.  
21 Q. And I apologize if I already asked you this.  
22 You said that when Mr. Tischer first arrived to the  
23 shanty, you spoke with him, correct, while he was in  
24 the PTI van?  
25 A. Yes.

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1 Q. And then you observed him walk into the porta  
2 potty, correct?  
3 A. I -- I kind of -- I mean, I observed him  
4 getting out and going that way but I didn't -- wouldn't  
5 say that I was, like, studying him because I was  
6 talking to Mr. Marvin. But I -- I did see him get out  
7 and go in there.  
8 Q. Understood. And when you saw him get out of  
9 the van and go into the porta potty, at that point in  
10 time, you did not observe anything out of the ordinary  
11 with the way he was walking or moving?  
12 A. No.  
13 Q. That's correct?  
14 A. Yes, yes.  
15 Q. Sir, thank you for your -- for your time.  
16 A. Yes, ma'am.  
17 **EXAMINATION**  
18 BY MR. COHEN:  
19 Q. Good afternoon. My name is Mike Cohen. I  
20 introduced myself earlier. And I represent  
21 Professional Transportation, Incorporated. And I just  
22 want to go back to your conversation with Charlie.  
23 When you first spoke to Charlie, when Charlie called  
24 you, did he relate to you that he talked to anybody  
25 else about this incident?

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1 A. That he had talked to any -- no.  
2 Q. Yes. No?  
3 A. Not that I recall.  
4 Q. You had mentioned that you took notes about  
5 what occurred the night of August 12th. Why did you  
6 take notes?  
7 A. Well, I assumed that at some point, I would  
8 have to do something like this and I didn't want to  
9 forget the, you know, times and details and things.  
10 So, I just wrote down my recollections of the night so  
11 that, you know, I wouldn't forget. But then, like I  
12 said, I left them in a box somewhere in Wisconsin in a  
13 storage unit. So, I don't have them anyway. So...  
14 Q. When did you record those recollections, when  
15 did you actually write it down?  
16 A. The next day or...  
17 Q. Okay. Is that before or after you talked  
18 with Charlie?  
19 A. Before.  
20 Q. Now, going back to the events of August 12th,  
21 I think you mentioned -- and tell me if I'm wrong --  
22 that Mr. Marvin mentioned that he would have  
23 Mr. Tischer put in the PTI van and the van would drive  
24 him somewhere; is that correct?  
25 A. Yes.

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1 Q. Okay. Did you ever hear anybody say anything  
2 directed at Mr. Lux?  
3 A. No.  
4 Q. Okay. And you mentioned that Mr. Lux -- you  
5 never heard Mr. Lux say anything to anybody?  
6 A. Not that I recall.  
7 Q. Okay.  
8 A. I don't recall him being involved in the  
9 conversations.  
10 Q. Okay. Did you ever observe Mr. Lux doing  
11 anything other than driving the van?  
12 A. No.  
13 Q. All right. You mentioned, I believe -- tell  
14 me if I'm wrong -- that you never received any first  
15 aid or medical training from Union Pacific; is that  
16 correct?  
17 A. Yes, that's correct.  
18 Q. Okay. Do you recall ever having been offered  
19 the ability to be trained by Union Pacific in first  
20 aid?  
21 A. Not that I recall.  
22 MR. COHEN: I have no further questions.  
23 MR. BANKER: No further questions.  
24 THE VIDEOGRAPHER: All right. This  
25 concludes this deposition. The time is 12:34.

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1 (Deposition concluded at 12:34 p.m.)  
2 (Signature waived)  
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1 STATE OF TEXAS  
2 COUNTY OF HARRIS  
3 REPORTER'S CERTIFICATION  
4 TO THE DEPOSITION OF  
5 JOHN CHARLES THOMAS, III  
6 TAKEN ON OCTOBER 30TH, 2019

7 I, Janel R. Wilson, Certified Shorthand Reporter  
8 in and for the State of Texas, hereby certify that this  
9 deposition transcript is a true record of the testimony  
10 given by the witness named herein, after said witness  
11 was duly sworn by me.

12 I further certify that I am neither attorney nor  
13 counsel for, nor related to, nor employed by any of the  
14 parties or attorneys in the action in which this  
15 proceeding was taken. Further, I am not a relative or  
16 employee of any attorney of record in this cause, nor  
17 do I have a financial interest in the action.

18 Certified to by me on this 4th day of November,  
19 2019.

20

21

22

\_\_\_\_\_  
Janel R. Wilson, CSR

Texas CSR 7517

23

Expiration: 12/31/2020

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